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July 28, 1992

JUL 28 1992Federal Communications Commission
Office of the Secretary**VIA HAND DELIVERY &
U.S. FIRST CLASS MAIL**Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

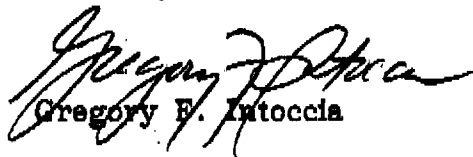
Subject: RM-7990

Dear Ms. Searcy:

Attached for filing in the captioned docket please find one (1) original via facsimile and five (5) photocopies of the Reply Comments of Metromedia Communications Corporation. Please note that the executed original will be sent under separate cover via U.S. First Class Mail.

Thank you for your assistance in this matter. Please contact me at (201) 804-6665 if you have any questions regarding the foregoing.

Sincerely,


Gregory F. Intoccia

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Attachments

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JUL 28 1992

Federal Communications Commission
Office of the SecretaryBefore the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
Petition for Clarification and) RM-7990
Modification of Pay-Per-Call Rules)
Filed by the National Association)
of Attorneys General)

REPLY COMMENTS OF METROMEDIA COMMUNICATIONS CORPORATION

Metromedia Communications Corporation ("Metromedia"), by its attorney, hereby submits these reply comments on the Petition for Clarification and Modification of Pay-Per-Call Rules filed by state attorneys general and the National Association of Attorneys General ("NAAG") regarding the Commission's pay-per-call ("PPC") rules.¹

SUMMARY

Metromedia agrees with the overwhelming consensus opinion of parties submitting comment that the Commission should adopt an order clearly making PPC rules applicable to calls made by way of "800" Inward

¹47 C.F.R. Sec. 64.709-716. Adopted in CC Docket 91-65, 6 FCC Rcd. 6166 (1991), Policies and Rules Concerning 900 Interstate Telecommunications Services.

WATs arrangements.² However, Metromedia disagrees with those parties who urge the Commission to adopt an order which prohibits Inward WATS service for services which bill customers through the use of tone-generation technology, automatic number identification (ANI) or billing detailed information.³ Metromedia submits that such a sweeping rule is not in the public interest. Consumer interests would be adequately protected by a more narrowly tailored rule aimed at ensuring that effective notice is provided to consumers of the costs of any information services which they may incur, and requiring that there be a clear affirmative act of acceptance by the consumer prior to the provision of such services.

**THE RULES SHOULD BE DERIVED
FROM GENERAL PRINCIPLES OF CONTRACT**

Underlying the comments of parties is the basic premise that consumers ought to have the right to know what they are purchasing prior to entering into a transaction, and that consumers should not be deemed to have accepted any goods or services without their clear manifestation of acceptance. Indeed both notice as to the terms of a

²The Commission, inter alia, requested comment on adopting an order "clearly stating that the pay-per-call rules apply when such services are offered over standard Inward WATS (800 Number) services..." Public Notice, DA 92-602, released June 2, 1992.

³The Commission requested comment on an order "prohibiting carriers from providing standard Inward WATS service for services which bill customers through the use of either tone-generation technology, automatic number identification (ANI) or billing detail information." Public Notice, DA 92-602, released June 2, 1992.

contemplated transaction and affirmative acceptance by behavior or language have long been recognized as essential elements to contracts in American jurisprudence. Metromedia argues that these important principles ought to guide the Commission in its construction of rules regulating Inward WATS service. The Commission should fashion rules which leave the consumer with notice as to what the costs are associated with their calls and that to receive services the customer must affirmatively act to authorize access to service. Consumers should be able to assume Inward WATS services is toll free unless explicitly told otherwise.

**PAY-PER-CALL RULES OUGHT TO APPLY WHEN SUCH
SERVICES ARE OFFERED OVER STANDARD INWARD WATS SERVICES.**

Metromedia agrees with the number of parties submitting comments which urge the Commission to adopt an order that would apply PPC rules when such services are offered over standard Inward WATS services. Of course the essential feature of those rules is that they apprise consumers as to the terms of any contemplated contract entered into over the telephone, including a general description of the product, service, or information that a caller will receive, and the rates to be charged. Such rules readily assist consumers in forming shared expectations by mandating a specific practice which should be part of any contract. Since the proposed rules offer adequate notice of any cost associated with Inward WATS PPC service, it has been well-received by numerous parties. It should be adopted.

**A LESS STRINGENT RULE IS APPROPRIATE THAN
PROHIBITING THE PROVISION OF INWARD WATS WHERE
BILLING IS ACCOMPLISHED BY TONE-GENERATION TECHNOLOGY,
AUTOMATIC IDENTIFICATION (ANI) OR BILLING DETAIL INFORMATION.**

At the heart of NAAG's concerns appears to be the reasonable belief that any scheme or device which deceives the public into accepting goods or services should be banned.⁴ However, to accomplish this end, it does not necessarily follow that the Commission should promulgate a rule banning all carriers from providing Inward WATS where billing is accomplished by tone-generation technology, automatic identification (ANI) or billing detail information. The sweep of such a rule is far wider than is necessary for the Commission to remedy the evil of deceptive telecommunications practices, and indeed works to the public's detriment.

As a threshold matter, the Commission ought to consider that were it to order the application of PPC rules to Inward WATS services, such rules by themselves would eliminate problems posed by unscrupulous telecommunications providers using deceptive practices. A mandatory disclosure of the terms by which information services are offered to callers would put the consumer on notice that beyond the completion of a call, the service that they may choose to accept over Inward WATs would involve a charge to them.

⁴See the Comments of the NAAG 900 Number Subcommittee and Attorneys General, p. 2.

This disclosure makes unnecessary an additional rule prohibiting carriers from offering Inward WATS billing by any of the foregoing methods. Besides being unnecessary, this additional rule suffers from several problems. The proposed rule's scope is over-reaching in that it would foreseeably eliminate the legitimate use of credit cards and traveling cards. The proposed rule could also foreseeably eliminate the legitimate use of WATS 800 service even where there exists a presubscription relationship between the caller and the information provider. No evidence has been presented which suggests that such cards or presubscription relationships present social problems which the Commission should address. Indeed such billing over the telephone has become a convenience that the public expects. Thus, Metromedia agrees with NAAG that should the Commission adopt the proposed rule, at the very least, exceptions be allowed for presubscription relationships⁵ and for the use of various forms of calling and credit cards.⁶

Practical problems also exist with the proposed rule that would prohibit carriers from providing Inward WATS where billing is accomplished by tone-generated technology, ANI, or billing detailed information. NAAG's proposal would require interexchange carriers to ascertain whether offending conduct was taking place on the basis of arrangements made over the telephone, and terminate calling service

⁵As defined by 47 CFR Sec. 64.709.

⁶See Comments of the NAAG 900 Number Subcommittee and State Attorneys General. p. 2.

based on that finding. The rule would require carriers to make judgments as to the propriety of providing a service to an Inward WATS customer based upon the content of telephone conversations and post conversation billing practices employed by the customer; such information about a service being offered within a telephone call and the associated billing arrangements, if any, are generally outside the knowledge of a carrier. Given the limited resources of the industry and the paucity of information upon which a carrier would be required to make judgments concerning the permissible provision of service, the proposed rule is at odds with the heightened obligation of a carrier to refrain from unreasonable discrimination and preferences, a mandate given by the Communications Act of 1934.⁷ The proposed rule puts the carrier in the impossible situation of making discriminating decisions as to whether a service may be continued to an Inward WATS customer based upon billing practices in which the carrier is not generally involved, the arrangements for which are made over the telephone, which the carrier could not routinely verify.

⁷Section 202 of the Communication Act of 1934 states: "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication services, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." Communications Act of 1934, 47 U.S.C. Sec. 202 (1983). On this same point, Metromedia is in general agreement with Pilgrim Telephone, Inc. See Comments of Pilgrim Telephone, Inc. p. 4.

The total elimination of the provision of ANIs in the billing process also presents problems for call verification unless an exception were made to the rule for that purpose. Routinely, 800 customers rely upon invoices including the telephone numbers of callers which utilized their service as verification prior to making payment. The provision of such information enables customers to validate that certain calls were made and properly rated. The rule's proposed elimination of the ANI (which is almost universally the same as a caller's telephone number) in the billing process therefore jeopardizes the integrity of Inward WATS billing between the carrier and the information provider even though the proposed rule aims at eliminating the ANI for use by an information provider in billing the consumer. Metromedia agrees with Sprint in the respect that it is unlikely that NAAG would seek to upset this arrangement of furnishing the ANI of each caller to an Inward WATS subscriber.*

The effect of the proposed rule prohibiting Inward WATS service for services which bill through the use of tone-generation technology, ANI or billing detailed information -- would be to prohibit essentially all information providers from using 800 facilities and migrate them to 900 services. Confining information providers to an established regime of "900 technology" is inconsistent with the Communications Act of 1934's statement that it "shall be the policy of the United States to encourage

*Comments of Sprint, p. 4.

the provision of new technologies and services to the public.⁹ The benefit to the public of Inward WATS PPC services is that no charges are incurred by the calling party until the party decides to engage in the transaction.

Of course it is understandable why the three largest interexchange carriers, AT&T, MCI, and Sprint, seek the migration of customers from 800 to 900 technology. The billing differences between 800 services and 900 services allows these carriers to derive substantially larger revenues from transactions generated from 900 than from 800 service. In Inward WATS 800 services, billing is accomplished directly by information providers. Unlike most 900 PPC services, 800 PPC services do not involve a carrier in the billing and collection process; hence carriers are not a party to any transaction and do not derive any billing and collection revenues from the process. In essence, AT&T, Sprint, and MCI complain because 800 service providers cut them out of sizeable revenues they might otherwise gain from a more lucrative 900 market. By no means should the similarity in the largest carriers positions be seen as some sort of altruistic "best evidence", as NAAG suggests, of the proposed rule as being a "reasonable step to protect consumers..."¹⁰

Rather than adopt an overly broad rule with the above problems, the Commission ought to adopt a more direct approach. Metromedia urges

⁹Communications Act of 1934, 47 U.S.C. Sec. 157 (1983).

¹⁰See the Comments of the NAAG 900 Number Subcommittee and Attorneys General, pp. 3-4.

that the Commission require that PPC services may only be provided when a caller gives a clear, affirmative acceptance to an information provider.¹¹ This requirement, coupled with a requirement of disclosure of rates and the general nature of any service provided, would adequately protect the public from any potential confusion, and not impede the development of new technologies in a rapidly changing marketplace.

Obviously the more detailed billing information that a person placing a call provides to a called information provider, the stronger the evidence that the caller actively accepted any goods or services provided. Therefore the Commission ought to consider the use of credit and calling card information given as strong evidence of consent and permit such card use. For the same reason, tone generation should be permissible as showing caller consent where the tones generated are substantial, for instance, where a caller makes multiple touch-tone entries into a telephone instrument.

On the other hand, the Commission should eliminate the use of all passive modes of caller acceptance of services, such as may be used with ANIs. ANIs should not be permitted to be used as an indicator of caller acceptance since operators, using ANI, may consider a caller to have accepted a service without the caller's knowledge. This prohibition of

¹¹In this respect, Metromedia is in general agreement with the Comments of VoiceLink, Inc. p. 3; and the Comments of Pilgrim Telephone, Inc., p. 7.

ANIs for purposes of consumer acceptance of a transaction should be distinguished from permissible use of ANIs for the validation of calls.

CONCLUSION

Metromedia urges that the Commission fashion rules which are narrowly tailored to the task at hand. Metromedia therefore urges the Commission to grant the NAAG petition only in part. The application of PPC rules to such services offered over Inward WATs would adequately ensure that consumer needs for valued goods and services are met, while ensuring that such transactions take place only with the mutual informed consent of the caller and the PPC provider. A blanket prohibition of PPC services from Inward WATS access would be unnecessarily restrictive and inconsistent with the public interest. As an alternative, the Commission should appropriately adopt a rule requiring affirmative acceptance by a caller for an information service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Metromedia Communications Corporation, Docket RM-7990, was served this 28th day of July, 1992, via first class mail, postage prepaid, to the parties on the attached list.


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